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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,003	08/01/2001	Mark Killmer	25720-702	5843
21971 7590 02/20/2008 WILSON SONSINI GOODRICH & ROSATI 650 PAGE MILL ROAD PALO ALTO, CA 94304-1050			EXAMINER WIDHALM, ANGELA M	
			ART UNIT 2152	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Technology Center 2100

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/921,003
Filing Date: August 01, 2001
Appellant(s): KILLMER, MARK

Kurt W. Carlson – Reg. No. 46,601
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 January 2008 appealing from the Office action mailed 18 April 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

NEW GROUND(S) OF REJECTION

Claims 1-4 are rejected under 35 U.S.C. 101.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6721713

Guheen et al.

4-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims fail to fall within a statutory category of invention because they are directed to a program itself, see appellant's specification p. 5 lines 6-16, and not a process occurring as a result of executing the program, not a machine programmed to operate in accordance with the program, nor a manufacture structurally and functionally

interconnected with the program in a manner which enables the program to act as a computer component and realize its functionality, and also not clearly directed to a composition of matter. Therefore, the claims are non-statutory under 35 U.S.C. 101.

PREVIOUS GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Guheen et al., (hereinafter Guheen), US Patent 6,721,713.

As to claim 1, Guheen discloses in Fig. 23C a computer program product including means for comparing (comparing products/services) a URL, title and/or content of an online site viewed by a user with a first index of keywords relating to a plurality of subject matter categories, to determine any subject matter categories to 'which the online site relates', means for cross-referencing any determined subject matter categories with a second index of alternative online sites categorized by subject matter, in order to determine any alternative online site in the same or similar category; and

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means for displaying any determined alternative online sites to the user (see col. 170 lines 30-66; col. 178 lines 20-36; col. 187 lines 1-65).

As to claims 5 and 10, Guheen discloses a method of comparative advertising in an online environment including the steps of analyzing an online site viewed by a user to identify products or subject matter advertised on the site; displaying to the user information relating to competing products or subject matter on alternative online sites (see col. 170 lines 56-65).

As to claim 2, Guheen discloses a first and second indexes are contained in a database remote from the computer program product (see fig. 3).

As to claims 3-4 and 6-7, Guheen discloses means for determining a geographic locality relating to the user; and means for determining any alternative sites in the same or proximate geographical locality to that relating to the user, so that the displaying means displays any of the determined alternative sites in the same or a similar subject matter category, that are also in the same or proximate geographical locality; and the step of determining a geographical locality relating to the user and only displaying alternative sites in the same or a proximate geographical locality wherein the geographical locality relating to the user is determined by analyzing the user's electronic address and/or the address of the online site viewed by the user (see col. 174 lines 62 – col. 175 line 1; fig. 10).

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As to claims 8-9 and 11-12, Guheen discloses the information displayed to the user includes hyperlinks to the alternative online site considered as a link to related data (see col. 170 lines 56-66); and discloses the analysis step is performed by analyzing the URL, title and/or content of the online site (see col. 177 lines 21-66, col. 180 lines 20-42).

As to claims 13-14, Guheen discloses the displayed information includes a price of the competing products; and including the steps of determining whether the competing product prices is less than the price of the identified product on the online site viewed by the user, and if less, displaying the competing product price to the user; or if not less, ascertaining a best price relating to the competing product and displaying the best price to the user or a value in-between (see fig. 66; col. 170 lines 44-64).

(10) Response to Argument

Appellant argues that Guheen does not disclose alternative online sites, however examiner respectfully disagrees. Guheen describes selecting links to access related online sites (see col. 205 lines 65-66). Guheen also describes presenting a comparative analysis of at least two vendors of web-based products/services (see fig. 10 #45). Fig. 23 illustrates comparing products/services, catalog of products/services, and providing quotes (prices, availability). Guheen later describes outputting a comparison between different web-based products and services offered by competitors (fig. 66 #1504, col. 170 lines 56-61, col. 170 lines 29-31). The explanations provided above clearly show that Guheen describes determining alternative online sites.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Angela Widhalm/
Examiner, Art Unit 2152
571.272.1035

Dated: 13 February 2008

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

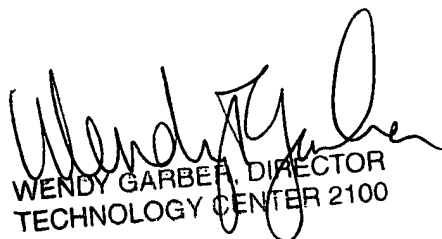
Conferees:



JEFFREY PWU
SUPERVISORY PATENT EXAMINER



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER



WENDY GARBER, DIRECTOR
TECHNOLOGY CENTER 2100